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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jan 10, 2020**

SEAN F. MCAVOY, CLERK

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF WASHINGTON  
10 AT RICHLAND

11 THE UNITED STATES OF  
12 AMERICA, and

13 THE STATE OF WASHINGTON,

14 ex rel. DAVID YAM, M.D., an  
15 individual,

16 Plaintiffs,

17 v.

18 PROVIDENCE HEALTH &  
19 SERVICES, a Washington non-profit  
20 corporation d/b/a PROVIDENCE ST.  
21 MARY MEDICAL CENTER,

22 Defendant.

No.

RELATOR'S COMPLAINT  
FOR VIOLATIONS OF THE  
FALSE CLAIMS ACT; AND  
COMPLAINT TO REDRESS  
ACTS OF REPRISAL UNDER  
THE FALSE CLAIMS ACT,  
THE MEDICAID FRAUD  
FALSE CLAIMS ACT, AND  
WRONGFUL WAGE  
WITHHOLDING UNDER  
WASHINGTON LAW

**JURY TRIAL DEMANDED**

**FILED UNDER SEAL**

23  
24  
25  
26  
RELATOR'S COMPLAINT FOR VIOLATIONS OF  
THE FALSE CLAIMS ACT, ETC. – Page 1

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## INTRODUCTION

1  
2 1. David Yam, M.D. brings this suit on his own behalf and as a qui  
3 tam relator on behalf of the State of Washington and the United States of  
4 America to recover treble damages and civil penalties arising out of the false  
5 statements and claims Providence Health & Services submitted to the State  
6 of Washington and the federal government in violation of the Medicaid  
7 Fraud False Claims Act, RCW Chapter 74.66, and the False Claims Act, 31  
8 U.S.C. §§ 3729-3732, and to redress acts of retaliatory conduct Providence  
9 forced Dr. Yam to endure as a result of his reporting Providence's fraudulent  
10 practices to Providence administrators and to the Office of the Inspector  
11 General.

## PARTIES

12  
13 2. The real party in interest to the False Claims Act and Medicaid  
14 Fraud False Claims Act claims herein is the sovereign government of the  
15 United States of American and the sovereign government of the State of  
16 Washington. At this time, David Yam, M.D., as a qui tam relator, is  
17 pursuing his cause of action on behalf of the Plaintiffs the United States of  
18 America and the State of Washington set forth herein pursuant to 31 U.S.C.  
19 §§ 3729-3732 and RCW Chapter 74.66. David Yam, M.D., as a qui tam  
20 relator, brings this suit to recover treble damages, civil penalties, and all  
21 other relief justiciable under the False Claims Act on behalf of the federal  
22 government and under the Medicaid Fraud False Claims Act on behalf of the  
23 State of Washington.

24 3. David Yam, M.D., as an individual plaintiff, is a citizen of the  
25 United States of America, residing in Brush Prairie, Washington, who brings  
26

1 this suit for False Claims Act retaliation, Medicaid Fraud False Claims Act  
2 retaliation, and wrongful wage withholding on his own behalf.

3 4. Providence Health & Services is a non-profit corporation  
4 organized under the laws of the State of Washington, which maintains its  
5 principal place of business in Renton, Washington, and which routinely  
6 transacts business in Walla Walla, Washington under the trade name  
7 Providence St. Mary Medical Center.

### 8 JURISDICTION AND VENUE

9 5. This Court has personal jurisdiction over Providence because  
10 Providence maintains a principal place of business in Richland County,  
11 Washington.

12 6. This Court has subject matter jurisdiction over the claims  
13 Dr. Yam brings as a qui tam relator under the False Claims Act. *See* 31  
14 U.S.C. 3730(b).

15 7. This Court has subject matter jurisdiction over Dr. Yam's claim  
16 for retaliation under the False Claims Act. *See* 31 U.S.C. § 3732.  
17 Supplemental jurisdiction over Dr. Yam's pendent claims brought under the  
18 laws of the State of Washington is appropriate because those claims  
19 integrally relate to Providence's fraud and Dr. Yam's claim for retaliation  
20 under the False Claims Act. *See* 28 U.S.C. § 1367(a).

21 8. The United States District Court in and for the Eastern District  
22 of Washington is the proper venue for this action because Providence resides  
23 in this judicial district. *See* 28 U.S.C. § 1391(b).

### 24 FACTUAL ALLEGATIONS

25 9. Dr. Yam is a neurosurgeon who received his medical degree  
26 from the University of Tennessee's College of Medicine, has been licensed to



1 practice medicine for almost a decade, and is currently an Associate  
2 Professor of Neurological Surgery at the Oregon Health and Science  
3 University.

4 10. Dr. Yam, through prior employment with Providence, advanced  
5 the reputation of Providence's neurological program in Walla Walla, which  
6 earned critical acclaim for safety and performance under his tenure. That  
7 recognition is in part attributable to Dr. Yam's intradepartmental efforts to  
8 review the work of his peers which began no later than 2016.

9 11. In February 2016, Dr. Yam reviewed the work of a now former  
10 colleague, Dr. Dan Elskens.

11 12. The review revealed Dr. Elskens committed severe surgical  
12 errors, including by operating on incorrect spinal sections, which resulted in  
13 post-operation complications necessitating emergency remedial surgery.  
14 Doctor Yam reported the errors to Providence's Chief Medical Officer,  
15 recommending that Dr. Elskens be terminated. Providence, after rejecting the  
16 recommendation, suspended Dr. Elskens when Dr. Yam discovered  
17 Dr. Elskens botched an additional surgery, nearly paralyzing the patient  
18 nearly a year later after many more patients were adversely harmed.  
19 Dr. Elskens resigned while on voluntary suspension, and without adverse  
20 reporting to the National Practitioner Data Bank.

21 13. Dr. Yam began reviewing the work of his fellow neurosurgeon  
22 with greater scrutiny after Providence failed to take seriously his initial  
23 allegations against Dr. Elskens. In keeping with that practice, Dr. Yam next  
24 reviewed the work of Dr. Jason Dreyer because Dr. Dreyer, who studied  
25 under Dr. Elskens, spoke highly of Dr. Elskens' work and recommended Dr.  
26 Elskens to join the group in Walla Walla.

1           14. Dr. Yam's review of Dr. Dreyer proved troubling. The review  
2 revealed that Providence (through Dr. Dreyer) was billing the federal  
3 government for medical services which neither Dr. Dreyer nor Providence  
4 performed. In addition, Dr. Dreyer was fabricating patient diagnoses and  
5 treatments to justify complex operations and to increase the billing and  
6 reimbursement of both himself and Providence.

7           15. For example, in January 2017, Dr. Dreyer claimed to perform  
8 fusion and decompression surgeries on a patient's L1-L5 spinal segments,  
9 and prepared records which, on information and belief, Providence used to  
10 bill the federal government for those services. Providence's purposeful  
11 submission of those records to the federal government amounts to a false  
12 claim for payment because Dr. Dreyer did not perform decompression  
13 surgery on the patient's L1 or L2 spinal segments. This false-billing incident  
14 caused the federal government to pay Providence sums likely exceeding  
15 \$150,000 for unnecessary and unperformed work.

16           16. Similarly, in December 2017, Dr. Dreyer reported performing  
17 fusion surgery on a patient's L-3 and L-4 spinal segments, and prepared  
18 records which, on information and belief, Providence used to bill the federal  
19 government for those services. Providence's purposeful submission of those  
20 records to the federal government amounts to a false claim for payment  
21 because Dr. Dreyer did not fuse those spinal segments together—they had  
22 already been fused together through prior surgeries. This false-billing  
23 incident caused the federal government to pay Providence significant sums  
24 for work which Providence never performed.

25           17. Other Providence documents establish that Providence's  
26 submission of those false claims for payment were not unintentional isolated



1 mistakes, but instead shed light on a purposeful, improper, and pervasive  
2 Providence practice. The contents of those documents, which Dr. Yam  
3 reviewed, but for reasons described below can no longer access, reveal that  
4 Providence, through Dr. Dreyer, would knowingly, and routinely, falsify  
5 patient medical records to justify as medically necessary certain expensive  
6 surgical procedures for which the federal government would accept financial  
7 responsibility. Doctor Yam alleges that Providence and Dr. Dreyer carried  
8 out this improper practice by subjecting patients to risky procedures that  
9 were legitimized through fraudulent diagnoses. In one instance, for example,  
10 Providence and Dr. Dreyer claimed a patient receiving federally funded  
11 medical treatment suffered from a severe deformity that required complex  
12 surgery, which Dr. Dreyer performed at great risk to the patient when, in fact,  
13 the deformity was documented not to exist in the patient. Doctor Yam  
14 believes, and therefore alleges, that Dr. Dreyer's improper practices provided  
15 a windfall to Providence at the federal government's expense which likely  
16 amounts to tens of millions of dollars and likely more.

17 18. When Dr. Yam initially reported his concerns to Providence in  
18 November 2017, Providence assured him action would be taken.  
19 Providence's response was nevertheless insufficient, and, for this reason,  
20 Dr. Yam alleges that the response was designed to allow Providence to  
21 continue to benefit from the aforementioned windfall. Indeed, Dr. Dreyer  
22 continued his same pattern and practice on Providence's behalf until Dr. Yam  
23 again complained in April 2018, explicitly using the words "fraud,"  
24 "malpractice," and "harm" in emails to key providence administrators in  
25 Walla Walla, in Spokane, and in Renton. Providence responded to Dr. Yam's  
26 renewed complaint through a flawed investigation which, Dr. Yam was told,

1 revealed no evidence of false billing. Providence administrators in Renton  
2 nevertheless allowed for the voluntary suspension of Dr. Dreyer's that  
3 limited his ability to practice at its Walla Walla facility as a result of that  
4 investigation. Dr. Dreyer ultimately resigned and is now practicing medicine  
5 in Spokane and, like Dr. Elskens, continues to practice without adverse  
6 reporting to the National Practitioner Data Bank.

7 19. Rather than commend Dr. Yam for his actions to protect patients  
8 and avoid further violations of law, Providence, acting through  
9 administrators located in Walla Walla and in Renton, retaliated against  
10 Dr. Yam. Providence, in this respect, involuntarily restricted Dr. Yam's  
11 ability to practice medicine, removed him from key committees, and, among  
12 other things, required that he participate in a review of his past works,  
13 effectively without pay. Providence also subjected Dr. Yam to excessive call  
14 and unpaid leave during this time attempting to force his resignation by  
15 causing him professional and emotional harm.

16 20. These retaliatory acts ultimately forced Dr. Yam to suffer past  
17 and prospective damages, and forced Dr. Yam's hand, causing him to  
18 provide a 120-day notice of resignation to Providence, and to report his  
19 concerns to the Office of the Inspector General. Providence shockingly  
20 reacted by subjecting Dr. Yam to further retaliation, including by refusing to  
21 pay Dr. Yam for past-due retention-bonuses, certain work which remains  
22 under paid, and for his accrued paid time off.

23 **FIRST CAUSE OF ACTION**  
24 **(False Claims Act Violation)**

25 21. Dr. Yam realleges the preceding paragraphs and, on behalf of  
26 the United States of America and the State of Washington, incorporates them  
as though fully restated through this reference.



1           22. The False Claims Act allows a claim relator to bring an action to  
2 redress the submission of a false claim for payment to the United States of  
3 America.

4           23. By virtue of the aforementioned acts, Providence knowingly  
5 presented or caused to be presented, false or fraudulent claims to the United  
6 States of America for payment or approval in violation of 31 U.S.C.  
7 § 3729(1)(A).

8           24. By virtue of the aforementioned acts, Providence knowingly  
9 made or used, or caused to be made or used, false or fraudulent records or  
10 statements material to false or fraudulent claims to obtain payments from the  
11 United States of America in violation of 31 U.S.C. § 3729(1)(B).

12           25. As relator, Dr. Yam cannot at this time identify each and every  
13 false claim for payment which Providence submitted to the United States of  
14 America but he has evidence of a long history of false claims that Providence  
15 is knowingly aware of and has failed to report. The information that would  
16 allow Dr. Yam to identify each of those false claims for payment remains in  
17 the possession, custody, and control of Providence.

18           26. The United States of America, being unaware of the falsity of  
19 the records, statements and claims made or caused to be made by Providence,  
20 paid the claims that would not be paid but for Providence's illegal conduct.

21           27. The United States of America, by reason of Providence's acts,  
22 has been damaged in an amount to be determined at trial.

23                           **SECOND CAUSE OF ACTION**  
24                           **(False Claims Act Retaliation)**

25           28. Dr. Yam realleges the preceding paragraphs and, on behalf of  
26 the United States of America and the State of Washington, incorporates them  
as though fully restated through this reference.



1           29. Providence's intentional mistreatment, abuse, and humiliation of  
2 Dr. Yam as a direct and proximate result of his having engaged in protected  
3 activity within the meaning of the False Claims Act damaged Dr. Yam and  
4 caused his constructive termination in violation of 31 U.S.C. § 3730(h)(1).

5           30. Dr. Yam has suffered great economic harm, including loss of  
6 income and future earnings, and has suffered other injury as a result of  
7 Providence's retaliatory conduct in an amount which will be proven at trial.

8                           **THIRD CAUSE OF ACTION**  
9                           **(Medicaid Fraud False Claims Act Violation)**

10           31. Dr. Yam realleges the preceding paragraphs and, on behalf of  
11 the United States of America and the State of Washington, incorporates them  
12 as though fully restated through this reference.

13           32. The Medicaid Fraud False Claims Act allows a claim relator to  
14 bring an action to redress the submission of a false claim for payment to the  
15 State of Washington.

16           33. By virtue of the aforementioned acts, Providence knowingly  
17 presented or caused to be presented, false or fraudulent claims to the State of  
18 Washington for payment or approval in violation of RCW 74.66.020(1)(a).

19           34. By virtue of the aforementioned acts, Providence knowingly  
20 made or used, or caused to be made or used, false or fraudulent records or  
21 statements material to false or fraudulent claims to obtain payments from the  
22 State of Washington in violation of RCW 74.66.020(1)(b).

23           35. As relator, Dr. Yam cannot at this time identify each and every  
24 false claim for payment which Providence submitted to the State of  
25 Washington but he has evidence of a long history of false claims that  
26 Providence is knowingly aware of and has failed to report. The information

1 that would allow Dr. Yam to identify each of those false claims for payment  
2 remains in the possession, custody, and control of Providence.

3 36. The State of Washington, being unaware of the falsity of the  
4 records, statements and claims made or caused to be made by Providence,  
5 paid the claims that would not be paid but for Providence's illegal conduct.

6 37. The State of Washington, by reason of Providence's acts, has  
7 been damaged in an amount to be determined at trial.

8 **FOURTH CAUSE OF ACTION**  
9 **(Medicaid Fraud False Claims Act Retaliation)**

10 38. Dr. Yam realleges the preceding paragraphs and, on behalf of  
11 the United States of America and the State of Washington, incorporates them  
12 as though fully restated through this reference.

13 39. Providence's intentional mistreatment, abuse, and humiliation of  
14 Dr. Yam as a direct and proximate result of his having engaged in protected  
15 activity within the meaning of the Medicaid Fraud False Claims Act  
16 damaged Dr. Yam and caused his constructive termination in violation of  
17 RCW 74.66.090(1).

18 40. Dr. Yam has suffered great economic harm, including loss of  
19 income and future earnings, and has suffered other injury as a result of  
20 Providence's retaliatory conduct in an amount which will be proven at trial.

21 **FIFTH CAUSE OF ACTION**  
22 **(Wrongful Wage Withholding)**

23 41. Dr. Yam realleges the preceding paragraphs and incorporates  
24 them on his own behalf as though fully restated through this reference.

25 42. Providence's intentional withholding of Dr. Yam's past-due  
26 retention-bonuses, wages for work which remains underpaid, and



1 compensation for his accrued time off amounts to willful wage withholding  
2 in violation of RCW 49.52.050.

3 43. Dr. Yam has suffered significant economic harm as a result of  
4 Providence's willful withholding of his wages in an amount which will be  
5 proven at trial.  
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1 **DEMAND FOR JURY TRIAL**

2 Dr. Yam, on behalf of himself, the State of Washington, and the  
3 United States of America, demands a jury trial on every element of his  
4 personal and qui tam claims, and on every element of any potential defense  
5 or affirmative defense Providence may assert.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs request the following relief:

8 A. That this Court enter judgment against Providence in an amount  
9 equal to three times the damages sustained by the United States of America  
10 as the direct and proximate result of Providence's conduct, plus a civil  
11 penalty of \$22,363, as permitted by 28 C.F.R. § 85.5, for each violation of 31  
12 U.S.C. § 3729 and RCW 74.66.020;

13 B. That Dr. Yam, in his capacity as a relator, be awarded the  
14 maximum amount allowed pursuant to 31 U.S.C. § 3730(d) and RCW  
15 74.66.070(1)(a) for bringing this action;

16 C. That Dr. Yam, in his capacity as a relator, be awarded all costs  
17 associated with his prosecution of this action, including, and without  
18 limitation, a reasonable award of attorney fees and all out-of-pocket expenses  
19 as provided by 31 U.S.C. § 3730(d) and RCW 74.66.070(1)(c);

20 D. That Dr. Yam be awarded double back pay, interest on that back  
21 pay, and compensation for his past and prospective economic damages, as  
22 well as an award to compensate Dr. Yam for his special damages under 31  
23 U.S.C. § 3730(h)(2) and RCW 74.66.090(2);

24 E. That Dr. Yam be awarded all costs associated with his  
25 prosecution of this action for retaliation under the False Claims Act,  
26 including, and without limitation, a reasonable award of attorney fees and



1 out-of-pocket expenses as provided by 31 U.S.C. § 3730(h)(2) and RCW  
2 74.66.090(2);

3 F. That Dr. Yam be awarded twice the amount of his unlawfully  
4 withheld wages, in addition to an award of attorney fees and out-of-pocket  
5 expenses as provided by RCW 49.52.070; and

6 G. For such other and further relief as the Court deems just and  
7 equitable.

8 DATED THIS 13<sup>th</sup> day of January, 2020.

9 McNAUL EBEL NAWROT &  
10 HELGREN PLLC

11 By 

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